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575; *Tel. Co. v. Rogers*, 68 Miss. 748, 9 South Rep. 823, 13 L. R. A. 859, 24 Am. St. Rep. 300. Actions for seduction and breach of promise rest upon grounds peculiar to themselves and damages are held to include also mental suffering. *Vanderpool v. Richardson*, 52 Mich. 336, 17 N. W. Rep. 936; *Sherman v. Rawson*, 102 Mass. 395, 399. The courts, however, are in irreconcilable conflict upon the question involved in this decision. Many respectable courts have allowed the recovery of damages for mental pain and anguish under similar circumstances. In two instances at least, notably, Texas and Indiana, the same court has held, at different times, both doctrines, at one time denying a recovery, at another allowing a recovery for mental suffering alone. See *Reese v. Tel. Co.*, 123 Ind. 294, 24 N. E. Rep. 163, overruled by *Tel. Co. v. Ferguson*, 157 Ind. 64, 60 N. E. Rep. 674, 54 L. R. A. 846. The principal case is supported by the weight of authority. See *Chase v. Tel. Co.*, 44 Fed. Rep. 554, 10 L. R. A. 464; *Kester v. Tel. Co.*, 55 Fed. Rep. 603; *Morton v. Tel. Co.*, 53 Ohio St. 431, 32 L. R. A. 735. The court holds, that the federal courts are bound by the construction given by a state court to a state statute, but in so far as the judgment of a state court proceeds upon questions of general law, a federal court is under no obligation to follow a state decision which does not meet with its approval. *Byrne v. Kansas City Ry. Co.*, 61 Fed. Rep. 605, 9 C. C. A. 666, 676, 24 L. R. A. 693, and the right to recover "some damages" upon some other ground, is held, not to carry with it the right to add to such nominal damages, damages for mental pain, grief or anguish. After reviewing the decisions of the Tennessee courts, the question involved is held one of general jurisprudence and as such, the declaration is held not to state a cause of action. See following note.

TELEGRAM—DELAY—MENTAL ANGUISH.—Defendant company failed to deliver to the plaintiff a telegram advising him of the death of his father. Receiving information from other sources, plaintiff made the journey to his father's home, arriving, however, too late to be present at the funeral. Thereupon he brought action for the alleged mental anguish and suffering sustained, and also for special damages for the expenses of the useless trip incurred by him, which would have been avoided had the message been promptly delivered. *Held*, damages for mental suffering alone cannot be recovered, either under the statute of Virginia or independent of such statute: that the expenses incurred in making the useless journey, which the prompt delivery of the telegram would have prevented, were too "uncertain and problematical" to form the basis of a law suit. *Alexander v. W.U.Tel. Co.* (1903), — C. C. E. D. Va.—126 Fed. Rep. 445.

The Virginia courts in construing the statutes of that state relating to this subject, decided that a plaintiff must show (1) the negligent failure of the defendant's agent in delivering the message and (2) *special damages* resulting to the plaintiff therefrom, which must be alleged and proved, before a jury can add an additional sum for grief and anguish of the plaintiff. Further that the statutes were merely declaratory of the pre-existing law and gave no action for mere mental anguish. *Connelly v. Tel. Co.*, 100 Va. 51, 40 S. E. Rep. 618, 56 L. R. A. 663. The principal case follows the doctrine of the common law and the weight of authority, and denies a recovery as to mental suffering, resulting from delay in the delivery of a telegram. See note to *R. R. v. Caulfield*, 11 C. C. A. (U. S.) 571; also following note.

TELEGRAM—NEGLIGENCE—MENTAL SUFFERING—DAMAGES.—Immediately upon the death of her husband, plaintiff, then in Iowa, prepared to take his body to the home of his parents in Illinois. To insure their meeting her

at the station and accompanying her to the family home, some distance in the country, plaintiff sent a message to one Robert Swearinger, an acquaintance of the family, as follows: "Harry dead. Arrive with corpse at 6 a. m. Tell Thomas. [Signed] Edith Cowan." As received the message was signed "Edith Erwin" and Swearinger, not knowing and unable to learn of any person by that name, failed to notify the family and there was no one to meet the widow at the station. Plaintiff was greatly distressed in mind under the circumstances and brought action for damages, *Held*, that damages may be recovered for mental pain and anguish, resulting from the negligent transmission of a telegram, though unconnected with physical injury. *Cowan v. W. U. Tel. Co.* (1904), — Ia. —, 98 N. W. Rep. 281.

The decision reviews the authorities holding the above doctrine and affirms an earlier decision of the same court. *Mentzer v. Tel. Co.*, 93 Ia. 752, 62 N. W. Rep. 1, 28 L. R. A. 72, 57 Am. St. Rep. 294. See *SHEARM. & RED. NEG.* (4th Ed.) sec. 756; *Graham v. W. U. Tel. Co.* (1903), — La. —, 34 South Rep. 91, 2 MICHIGAN LAW REVIEW 150; *Bryan v. W. U. Tel. Co.* (1903), — N. C. —, 45 S. E. Rep. 938, 2 MICHIGAN LAW REVIEW 421. The modern doctrine, so-called, allowing the recovery of damages for mental suffering, independent and apart from physical injury, is steadily gaining ground, as shown by a number of recent cases both in this country and in England. See *Bell v. G. N. R. Co.*, 26 L. R. Ir. 428; *Wilkinson v. Downton* (1897), 2 Q. B. 57; *Dulieu v. White* (1901), 2 K. B. 669 and *J. E. Dunn & Co. v. Smith* (1903), — Tex. —, 74 S. W. Rep. 576; *Lewis et al. v. Holmes* (1903), 109 La. 1030, 61 L. R. A. 274, 2 MICHIGAN LAW REVIEW 226; *Morse v. Chesapeake & Ohio Ry. Co.* (1903), — Ky. —, 77 S. W. Rep. 361, 2 MICHIGAN LAW REVIEW 411. See two preceding notes.

**TORT—LIBEL—PRIVILEGED COMMUNICATIONS—IRRELEVANT MATTER IN PLEADINGS.**—Defendant filed an affidavit to perpetuate testimony to be used to rebut fraudulent claims against her estate, and alleged in her application that the parties were asserting a claim to her estate "through the false, fraudulent, and malicious representations" of plaintiff, who was an attorney. On a demurrer for insufficient facts, *Held*, statements as to plaintiff were not privileged, and that a cause of action was stated. *King v. McKissick* (1903), — C. C. Dist. — Nevada, 126 Fed. Rep. 215.

The court holds that the only issue raised by the application was the fact that a fraudulent claim was being asserted to defendant's estate. The statement as to the plaintiff being, therefore, wholly irrelevant and immaterial, is not a privileged communication. In reference to the privilege extended to allegations in pleadings, two distinct rules prevail. The English courts hold the privilege to be absolute, whether the allegations be pertinent to the issues or not. *NEWELL ON SLANDER AND LIBEL*, 460; *ODGERS ON LIBEL AND SLANDER*, 188. A few American cases follow this holding; *Runge v. Franklin*, 72 Tex. 583; 3 L. R. A. 417; *Bartlett v. Christhul*, 69 Md. 219. The English rule is further supported by *TOWNSHEND ON SLANDER AND LIBEL*, 381. The general rule prevalent in America is, however, that announced in the principal case. *Johnson v. Brown*, 13 W. Va. 73; *McLaughlin v. Cowley*, 127 Mass. 316; *Wilson v. Sullivan*, 81 Ga. 238. For a review of cases bearing on this proposition, see note to *Randall v. Hamilton*, 22 L. R. A. 649.

**TORT—SLANDER—INSANITY AS A DEFENSE.**—In an action for slander in charging plaintiff with maintaining improper relations with defendant's husband, evidence tending to establish defendant's insanity at the time of speak-